

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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WILDLIFE RESEARCH CENTER, INC.,

Plaintiff,

v.

**ORDER**

Civil File No. 06-3745 (MJD/JSM)

HME PRODUCTS, LCC, and  
TERRY A. HARMSTON,

Defendants.

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J. Thomas Vitt, Bart B. Torvik, Dorsey & Whitney LLP, Counsel for Plaintiff.

James T. Nikolai, Peter G. Nikilai, Nikolai & Mersereau, PA, Counsel for  
Defendants.

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The above-entitled matter comes before the Court upon the Report and Recommendation of United States Magistrate Judge Susan Richard Nelson dated August 6, 2007. Defendant filed objections to the Report and Recommendation and Plaintiff filed a response to those objections.

Pursuant to statute, the Court has conducted a de novo review of the record. 28 U.S.C. § 636(b)(1); Local Rule 72.1(c). Based on that review the Court adopts the Report and Recommendation dated August 6, 2007.

Accordingly, based upon the files, records, and proceedings herein, **IT IS**

**HEREBY ORDERED** that:

1. The Magistrate Judge's Report and Recommendation dated August 6, 2007, [Docket No. 35] is hereby **ADOPTED**.
2. Defendant's Motion to Dismiss, or, alternatively, for Summary Judgment of Non-Infringement [Docket No. 4] is **DENIED IN PART**, insofar as it seeks summary judgment of non-infringement under Rule 56 of the Federal Rules of Civil Procedure.
3. Defendant's Motion to Dismiss, or, alternatively, for Summary Judgment of Non-Infringement [Docket No. 4] is **DENIED IN PART AS MOOT**, insofar as it seeks dismissal under Rule 12 of the Federal Rules of Civil Procedure.
4. Plaintiff's motion for partial summary judgment of infringement of Claims 1 and 7 [Docket No. 19] is **GRANTED**.

Dated: September 18, 2007

s / Michael J. Davis  
Judge Michael J. Davis  
United States District Court